

DOCUMENT RESUME

03274 - [A2233351]

[Protest against Award of Certain Quantities of Scrap Metals].  
B-189363. August 6, 1977. 2 pp.

Decision re: Ekco Metals; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).  
Organization Concerned: Department of Defense.  
Authority: 39 Comp. Gen. 827. 38 Comp. Gen. 532. B-181208  
(1974). B-168460 (1970).

The protester objected to the award to another bidder of certain quantities of scrap metals under a surplus sale contract, alleging that their insurance carrier erroneously issued a bond for \$50,000 total bid coverage instead of \$50,000 deposit coverage incident to this sale. Although they were the high bidder, the protester was denied the award of any amount in excess of their bid bond. The award of scrap metal to the protester was properly limited to the amount supported by the protester's bid bond. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE: B-189363**

**DATE: August 8, 1977**

**MATTER OF: Ekco Metals**

**DIGEST:**

**Award of scrap metal to protester on surplus property sale was properly limited to amount supported by protester's bid bond.**

Ekco Metals (Ekco) protests the award to another bidder of certain quantities of scrap metals on Department of Defense surplus sale No. 41-7278.

Ekco states that its insurance carrier erroneously issued a bond for \$50,000 total bid coverage instead of \$50,000 deposit coverage incident to this sale. Although Ekco was the apparent high bidder on approximately \$70,000 worth of surplus materials, it was denied the award of any amount in excess of its bid bond. Ekco contends that it is being unjustly penalized for this error. We have been advised that the solicitation required the submission of a bid bond deposit and provided for the rejection of bids not supported by a bid bond.

We have long considered that bid bond requirements in a solicitation constitute a material part of the invitation and that a bid bond in less than the required amount normally requires rejection of the bid as nonresponsive. 39 Comp. Gen. 827 (1960). This rule, far from being unjust, requires all bidders to adhere to the same standard and prevents bidders from gaining an unfair advantage by precluding post bid-opening decisions regarding whether or not to attempt to become eligible for award. See 38 Comp. Gen. 532 (1959).

We have, however, recognized an exception to the general rule of nonresponsiveness for inadequate bid bonds in the case of surplus property sales where awards frequently are made on an item-by-item basis. In such circumstances, we have sanctioned the partial award to a bidder of those items or lots on which he is high bidder and which his bid bond is sufficient to support. Repco Industries, Inc., B-181208, July 29, 1974, 74-2 CPD 67; B-168460, February 2, 1970.

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In view of the foregoing, we are of the opinion that the award to Ekco was properly limited to an amount supportable by its bid bond.

Accordingly, the protest is denied.

*W. K. Miller*  
Deputy Comptroller General  
of the United States